

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

FRANK CARBONE, ANDREW CORZO,  
SAVANNAH ROSE EKLUND, SIA HENRY,  
ALEXANDER LEO-GUERRA, MICHAEL  
MAERLENDER, BRANDON PIYEVSKY, KARA  
SAFFRIN, and BRITTANY TATIANA WEAVER,  
individually and on behalf of all others similarly situated,

Plaintiffs,

v.

BROWN UNIVERSITY, CALIFORNIA INSTITUTE  
OF TECHNOLOGY, UNIVERSITY OF CHICAGO,  
THE TRUSTEES OF COLUMBIA UNIVERSITY IN  
THE CITY OF NEW YORK, CORNELL  
UNIVERSITY, TRUSTEES OF DARTMOUTH  
COLLEGE, DUKE UNIVERSITY, EMORY  
UNIVERSITY, GEORGETOWN UNIVERSITY, THE  
JOHNS HOPKINS UNIVERSITY, MASSACHUSETTS  
INSTITUTE OF TECHNOLOGY, NORTHWESTERN  
UNIVERSITY, UNIVERSITY OF NOTRE DAME DU  
LAC, THE TRUSTEES OF THE UNIVERSITY OF  
PENNSYLVANIA, WILLIAM MARSH RICE  
UNIVERSITY, VANDERBILT UNIVERSITY, and  
YALE UNIVERSITY,

Defendants.

**Case No. 1:22-cv-00125**

**Hon. Matthew F. Kennelly**

**ORDER REGARDING FERPA  
AND THE PRODUCTION OF  
CERTAIN DOCUMENTS AND  
INFORMATION**

The parties having concluded that certain information and documents sought in Plaintiffs' discovery ("records") in this action may fall within the definition of "Education Records" and may contain information that may fall within the definition of "Personally Identifiable Information" under 20 U.S.C. §§ 1232g(a)(4)(A) and 1232g(b)(1) of the Family Educational Rights and Privacy Act ("FERPA"); and

FERPA providing that “Education Records” and “Personally Identifiable Information” derived therefrom may be disclosed if the records are provided pursuant to judicial order so long as “a reasonable effort” is made “to notify the parent or eligible student of the order . . . in advance of compliance, so that the parent or eligible student may seek protective action.” 34 C.F.R. § 99.31(a)(9)(i)-(ii); and

The Court having entered a Confidentiality Order (“Confidentiality Order”) allowing Defendants to safeguard the continuing confidentiality of Education Records that may be produced in this action, including by deidentification pursuant to 34 C.F.R. § 99.31(b)(1) and the redaction of Personally Identifiable Information from those Education Records; and

The Confidentiality Order providing for the redaction of Personally Identifiable Information in Education Records and for deidentification pursuant to 34 C.F.R. § 99.31(b)(1); and

This action having been brought on behalf of students and former students at the Defendant institutions, and those who made payments to the institutions on the students’ behalf; and

To establish a process governing discovery of records requested in discovery that may be protected by FERPA; and

Good cause existing for the making of this Order:

It is ORDERED that:

1. To the extent that Defendants are required to produce Education Records and other documents containing Personally Identifiable Information, they shall do so in accordance with the Confidentiality Order.

2. If a Defendant determines to provide notice under 34 C.F.R. § 99.31(a)(9)(ii) with respect to any documents it will produce in discovery, the Defendant shall provide notice, substantially in the form attached to this Order as Exhibit A (“Notice”), to any applicants or

students implicated in those documents, notifying them so the applicants or students may seek protective action in a court filing. The Notice shall be sent by email to the most recent electronic mail address in the Defendant's possession for each of the affected students or, if no such email address is available, by mail to the last known address of the applicant or student. The Notice shall advise the recipient that, if they wish to seek protective action, they have 14 days from the date the Notice is sent to seek protection from the Court. A Defendant's attempt to deliver notice in this manner will be deemed a reasonable effort irrespective of whether any electronic mail address or physical address proves to be outdated. Any Defendant providing a Notice to students shall promptly advise Plaintiffs of that fact.

3. The Court will provide the parties notice of any letters seeking protective action from affected students by filing the letters on the docket and give the parties an opportunity to respond to such efforts to seek protective action within 30 days after such filing, after which the Court will determine whether to order the Defendant to produce the information notwithstanding the students' requests.


4. The Defendant may produce the requested documents and information without prior consent if the affected student has not sought protection from the Court within 30 days of the date on which the Defendant distributes the Notice. If protection is sought from the Court, the Defendant will withhold production of documents and information relating to that student pending further order of this Court, but the Defendant may proceed to produce documents and information relating to other affected students.

5. Nothing in this order precludes a Defendant from objecting to a request for production of documents or information covered by FERPA on any grounds supported by the Federal Rules of Civil Procedure.

6. Each Plaintiff in this action consents to the disclosure by Defendants in discovery in this action of any of their individual Personally Identifiable Information, Education Records, and other information that might be protected under FERPA or other applicable statutes.

**SO ORDERED.**

Dated: 10/26/2022

  
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Hon. Matthew F. Kennelly

**Exhibit A**

**[Defendant Name]** is providing this notice in connection with a lawsuit between Frank Carbone, Andrew Corzo, Savannah Rose Eklund, Sia Henry, Alexander Leo-Guerra, Michael Maerlender, Brandon Piyevsky, Kara Saffrin, and Brittany Tatiana Weaver, individually and on behalf of all others similarly situated (collectively, “Plaintiffs”) and Brown University, California Institute of Technology, University of Chicago, The Trustees of Columbia University in the City of New York, Cornell University, Trustees of Dartmouth College, Duke University, Emory University, Georgetown University, The Johns Hopkins University, Massachusetts Institution of Technology, Northwestern University, University of Notre Dame Du Lac, The Trustees of the University of Pennsylvania, William Marsh Rice University, Vanderbilt University, and Yale University (collectively “Defendants”). The case caption is *Carbone, et al. v. Brown University, et al.*, Case No. 1:22-cv-00125 (Northern District of Illinois).

As part of their discovery, Plaintiffs have requested information that may fall within the definition of “Education Records” and may contain information that may fall within the definition of “Personally Identifiable Information” under 20 U.S.C. §§ 1232g(a)(4)(A) and 1232g(b)(1) of the Family Educational Rights and Privacy Act (“FERPA”). FERPA protects your Education Records and the Personally Identifiable Information contained within your records from unauthorized disclosure. FERPA also allows this information to be disclosed, without your prior written consent, pursuant to a judicial order and in accordance with 20 U.S.C. § 1232g(b)(2)(B) and 34 C.F.R. § 99.31(a)(9)(i).

Plaintiffs have requested information pertaining to you, which may include your Education Records, including your admission and financial aid records and related information, from **[Defendant name]**. **[Defendant Name]** will provide Plaintiffs with the requested information, pursuant to a court order.

**The information will be provided under strict standards of confidentiality enforced by an order of the United States District Court for the Northern District of Illinois limiting the records disclosed for use in this lawsuit only.**

**You may seek protective action from the Court** if you do not want **[Defendant Name]** to provide the requested information to Plaintiffs. If you wish to object to the disclosure of your information as described above, you must, within 14 days of the date on this Notice:

1. Write a letter to the Court notifying the Judge that you seek protective action concerning disclosure of some or all of your records;
2. On the first page of your letter, write in large or underlined letters:  
OBJECTIONS TO DISCLOSURE OF FERPA INFORMATION IN BROWN  
UNIVERSITY, et al. v. FRANK CARBONE, et al., Case No. 1:22-cv-00125.
3. Include your name, address, phone number and/or email address; and
4. Mail your letter to:  
Clerk’s Office: Attn: Hon. Matthew F. Kennelly  
U.S. District Court Northern District of Illinois  
219 South Dearborn Street  
Chicago, IL 60604  
(312) 435-5670

All objections must be in writing, and must be received by the Court no later than **30 days from the date of this Notice. PLEASE DO NOT CALL THE COURT.**